

ROY LINDGREN

IBLA 79-225

Decided September 28, 1979

Appeal from decision of Utah State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease offer U-41796.

Affirmed.

1. Notice: Generally -- Oil and Gas Leases: Rentals

Where BLM sends by certified mail a request for payment of advance rental to the address of record of a successful offeror in a simultaneously filed oil and gas lease drawing and such request is returned by the Post Office, marked "Moved, left no address," the offeror is properly deemed to have "receipt of notice" under 43 CFR 1810.2. Where the address of record of the offeror is that of a leasing service and the leasing service moves, filing a change of address form with the Post Office in the name of the leasing service, but not in the name of appellant, the Post Office properly returned the notice addressed to the offeror to BLM.

2. Oil and Gas Leases: Rentals

A successful offeror in a BLM simultaneous filing procedure who fails to pay the first year's advance rental within 15 days from the receipt of notice that such payment is due will be disqualified as an offeror.

APPEARANCES: Joel Held, Esq., Durant, Mankoff, Davis, Wolens & Francis, Dallas, Texas, for appellant; Jason R. Warran, Esq., McDade and Lee, Washington, D.C., and Craig R. Carver, Esq., Head, Moye, Carver & Ray, Denver, Colorado, for Bernard Selz.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Roy Lindgren appeals from a letter decision of the Utah State Office, Bureau of Land Management (BLM), dated January 29, 1979, disqualifying simultaneous oil and gas lease offer U-41796 because he failed to submit the rental due within the time required by 43 CFR 3112.4-1.

Appellant's drawing entry card (DEC) was drawn with first priority in the October 1978 simultaneous oil and gas drawing for parcel UT 77. 43 CFR 3112.4-1 requires that rental be received in the proper office within 15 days from the receipt of notice that such payment is due. BLM sent the notice of rental due to appellant by certified mail to 6060 N. Central Expressway, Suite 254, Dallas, Texas 75206, the same address which was listed on his DEC. The postal service returned the notice to BLM, noting the following reason for failure to make delivery: "Moved, left no address." The check for the rental submitted by Boardwalk Petroleum, Inc., arrived after the 15 days allowed by 43 CFR 3112.4-1. On July 29, 1979, BLM returned the check to appellant for the following reasons: "Boardwalk Petroleum Inc., does not have the power of attorney to act for Roy Lindgren, according to our records. Also, Mr. Lindgren's 15 days have expired for receipt of payment. Notice of rental due must accompany a payment of rental."

BLM then offered the lease to the offeror with the card having second priority.

In his statement of reasons, appellant contends that: his DEC was mailed to BLM by Federal Energy Corporation (FEC); the return address was 6060 N. Central Expressway, Suite 254, Dallas, Texas (hereinafter referred to as "6060"); on or about November 1, 1978, FEC moved its principal offices and filed a change of address form with the postal authorities requesting that mail be forwarded to 8350 N. Central Expressway, Dallas, Texas (hereinafter referred to as "8350"); BLM mailed an envelope which it said was the notice of rental due to appellant at 6060 by certified mail; the envelope was not forwarded to 8350 but returned to BLM; the postal authorities made no attempt to forward the notice.

43 CFR 3112.4-1 requires that "[r]ental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due." (Emphasis added.)

Appellant attempts to explain that there was no "receipt of notice" as defined in 43 CFR 1810.2(b). He offers the following analysis of 43 CFR 1810.2(b): the first part of subsection (b) states that it is immaterial that the notice was not received by the applicant so long as delivery was made. However, in order to qualify as "receipt" under 43 CFR 3112.4-1, one of the conditions set forth in

43 CFR 1810.2(b) must be met. Appellant claims that none of these conditions was present in his case. That is, a forwarding address was left with the postal authorities; he did not refuse delivery; and 6060 N. Central Expressway does exist. Finally, appellant notes that in order for delivery to be assumed, the attempt to deliver must be substantiated by the postal authorities. Appellant asserts that there is no affidavit from the postal authorities to substantiate the contention that Lindgren moved without leaving a forwarding address. He claims that the notation on the envelope "Moved, left no forwarding address" is no substantiation that Lindgren moved without leaving a forwarding address, especially in light of the affidavit submitted by appellant in which the president of FEC states that a forwarding address slip was filed with the Post Office. Appellant concludes that none of the conditions of 43 CFR 1810.2(b) has been met and therefore he did not receive the notice as required by 43 CFR 3112.4-1.

Bernard Selz, whose offer was drawn with second priority, filed an answer to appellant's statement of reasons. Jason R. Warran, attorney for Selz, filed an affidavit which reads as follows:

Jason R. Warran, under oath, states as follows:

1. That he is associated with the firm of McDade and Lee, counsel for Bernard Selz in this matter.
2. That on March 9, 1979, he wrote to the Postmaster in Dallas, Texas (copy of letter attached), requesting any information concerning records of change of address of Federal Energy Corporation or Roy Lindgren.
3. That in response to his request, he received on March 21, 1979, a copy of change-of-address form filed by "Federal Energy Development Co." on a page on which appeared a handwritten note, "There is not a change of address for Roy Lindgren" (copy of this document, and of the envelope in which it was sent, addressed in the same handwriting as the note, also attached).

In response, appellant contends that the handwritten note appearing on the page with the copy of the change of address form cannot be viewed as evidence because anyone could have written it. He points out that there is no affidavit from the Post Office to verify who wrote the note.

Appellant submitted an affidavit of Rebecca Shotland, an employee of FEC, in which she stated that she received an envelope addressed to Roy Lindgren at 6060 which the Post Office forwarded to 8350 pursuant to the change of address form.

Appellant urges that his change of address was properly filed and that notice was not forwarded to him because the Post Office made a mistake.

In response, Selz emphasizes that appellant has failed to establish that a notice of change of address in appellant's name was properly and timely filed with the Post Office. Selz points out that the envelope furnished by appellant as evidence that his mail was being forwarded contains no indication of postage or postmark and, more important, nothing whatsoever suggesting that it had been forwarded as alleged.

[1, 2] The applicable regulation at 43 CFR 1810.2 provides as follows:

§ 1810.2 Communications by mail; when mailing requirements are met.

(a) Where the regulations in this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities. [Emphasis supplied.]

Regardless of any information submitted by appellant, the uncontradicted fact remains that no change of address form for Roy Lindgren, the named addressee, was filed with the Post Office. The copy of the change of address form filed by FEC shows a change of address for FEC, not Roy Lindgren, and the Post Office properly delivered the notice to 6060. We therefore conclude that the above regulation covers this situation, that an offer of delivery could not be consummated because the addressee had moved without leaving a forwarding address. A notice sent by certified mail will be deemed to have been received if it was delivered to the addressee's last address of record "regardless of whether it was in fact received by him." 43 CFR 1810.2(b). John S. Pehar, 41 IBLA 191 (1979). So, appellant is deemed to have received the notice of rental due as required by 43 CFR 3112.4-1. Appellant, having been given the benefit of notice properly

mailed to his address of record, was disqualified as an offeror 15 days after notice was returned by the Post Office. Charles M. Brady, 33 IBLA 375 (1978).

We note that this problem could have been avoided if appellant or FEC had notified BLM of the change of address. See 43 CFR 1810.2(a); cf. 43 CFR 4.22(d).

The decision appealed from recites that Boardwalk Petroleum, Inc., does not have the power of attorney to act for Roy Lindgren. We assume that BLM is making reference to the fact that payment for the rental was drawn on the account of Boardwalk Petroleum, Inc. This Board has held that a rental check for an oil and gas offer need not necessarily be signed by the offeror. Lillian Sweet, 37 IBLA 25 (1978).

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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James L. Burski  
Administrative Judge

